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7 VLSI TECHNOLOGY LLC,
8 Plaintiff,
9 v.
10 INTEL CORPORATION,
11 Defendant.

Case No. 17-cv-05671-BLF

**ORDER GRANTING
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED**

[Re: ECF Nos. 542, 546, 550]

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13 Before the Court are VLSI Technology LLC's ("VLSI") Administrative Motions regarding
14 its Daubert Motion to Exclude Damages Opinions of Intel's Experts (ECF No. 544) and its
15 Daubert Motion to Exclude Technical Opinions of Intel's Experts (ECF No. 545):

16 1. Administrative Motion to Consider Whether Another Party's Material Should Be
17 Sealed re: VLSI's Motion to Exclude Damages Opinions of Intel's Experts, and
18 Exhibits Thereto. ECF No. 542.

19 2. Administrative Motion to Consider Whether Another Party's Material Should Be
20 Sealed re VLSI's Daubert Motion to Exclude Technical Opinions of Intel's Experts.
21 ECF No. 546.

22 3. Administrative Motion to Consider Whether Another Party's Material Should Be
23 Sealed (Correction of ECF No. 546). ECF No. 550.

24 For the reasons described below, the Administrative Motions are GRANTED.

25 **I. BACKGROUND**

26 VLSI filed its Daubert Motion to Exclude Damages Opinions of Intel's Experts ("Damages
27 Motion") on July 25, 2023. ECF No. 544. That same day, VLSI filed an Administrative Motion
28 to File Under Seal regarding VLSI's information in the Motion. ECF No. 542. Intel Corporation

1 (“Intel”) filed a declaration and exhibits in support of VLSI’s administrative motion. ECF Nos.
2 618, 619. NXP Semiconductors USA, Inc., NXP Semiconductors B.V. and Freescale
3 Semiconductor Inc. (collectively “NXP”) also filed a declaration in support of VLSI’s
4 administrative motion. ECF No. 621. VLSI did not name NXP in ECF No. 542, but the Court
5 nonetheless considers NXP’s declaration in the interest of judicial economy.

6 VLSI filed its Daubert Motion to Exclude Technical Opinions of Intel’s Experts
7 (“Technical Motion”) on July 25, 2023. ECF No. 545. The next day, VLSI filed an
8 Administrative Motion to File Under Seal regarding VLSI’s information in the Motion. ECF No.
9 546. VLSI subsequently filed a correction to ECF No. 546 with updated exhibits. ECF No. 550.
10 Intel filed a declaration and exhibits in support of VLSI’s Administrative Motion. ECF Nos. 620,
11 622.

12 II. **LEGAL STANDARD**

13 “Historically, courts have recognized a ‘general right to inspect and copy public records
14 and documents, including judicial records and documents.’” *Kamakana v. City & Cty. Of
15 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
16 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong
17 presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto.
18 Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
19 motions that are “more than tangentially related to the underlying cause of action” bear the burden
20 of overcoming the presumption with “compelling reasons” that outweigh the general history of
21 access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d
22 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

23 Records attached to motions that are “not related, or only tangentially related, to the merits
24 of a case,” however, are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809
25 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to
26 court records attached only to non-dispositive motions because those documents are often
27 unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving to seal
28 the documents attached to such motions must meet the lower “good cause” standard of Rule

1 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard
2 requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
3 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
4 1210–11 (9th Cir. 2002); *see* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated
5 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int'l Ins.*
6 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

7 **III. DISCUSSION**

8 The documents at issue in VLSI’s motions to seal are associated with its *Daubert* motions.
9 These opinions concern infringement and invalidity of the patents at issue in the case, available
10 damages for the alleged infringement, and efforts to strike or exclude expert opinions. These
11 issues are “more than tangentially related to the merits of [the] case” and therefore the parties must
12 provide “compelling reasons” for maintaining the documents under seal. *See Ctr. for Auto Safety*,
13 809 F.3d at 1101; *see also Finjan, Inc. v. Juniper Network, Inc.*, No. C 17-5659 WHA, 2021 WL
14 1091512, at *1 (N.D. Cal. Feb. 10, 2021).

15 **A. ECF No. 542 (Damages Motion)**

16 **i. Intel**

17 Intel seeks to seal selected portions of VLSI’s Damages Motion and its exhibits. Intel
18 writes that licensing information should be sealed because “[p]ublic disclosure of information
19 regarding the payment terms from Intel’s license agreements, the scope of Intel’s license
20 agreements and other terms from Intel’s agreements could negatively affect Intel’s future licenses
21 and settlements and negotiations for such agreements.” ECF No. 618 ¶ 13. Intel adds that
22 financial information should be sealed because “[d]isclosure of information regarding Intel’s
23 financials and financial decisions—such as product pricing; discounts and criteria Intel uses for
24 pricing; and Intel’s revenue, profits, and costs—would provide competitors and potential
25 counterparties with unfair insight into Intel’s business strategies and cost/benefit analyses.” *Id.* ¶
26 15. Intel contends that it “has narrowly identified for redaction with yellow highlighting the
27 portions of VLSI’s *Daubert* memorandum that reveal highly confidential licensing information.”
28 *Id.* ¶ 17.

United States District Court
Northern District of California

1 The Court finds that compelling reasons exist to seal the highlighted portions of the
 2 document. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2016 WL 7911651, at *1
 3 (N.D. Cal. Apr. 6, 2016) (finding “technical operation of [defendant’s] products” sealable under
 4 “compelling reasons” standard); *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG,
 5 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020) (noting that courts have found “confidential
 6 business information” in the form of “business strategies” sealable under the compelling reasons
 7 standard.). The Court also finds that the request is narrowly tailored. The Court’s ruling is
 8 summarized below:

9 ECF or Exhibit No.	10 Document	11 Portion(s) to Seal	12 Ruling
	VLSI’s Memorandum	Yellow highlighted portions	Granted, as yellow highlighted portions of VLSI’s memorandum on page 11 reveals highly confidential licensing information regarding payment terms. Selwyn Decl. ¶ 17.
13 Ex. 1	14 Excerpt from the transcript of the deposition of Patrick Fay	15 Yellow highlighted portions	16 Granted, as yellow highlighted portions of Exhibit 1 on page 34 reveals highly confidential technical information regarding design details and/or operation of accused features in Intel’s products. Selwyn Decl. ¶ 18.
17 Ex. 2	18 Excerpt from June 1, 2023 Rebuttal Expert Report of Patrick Fay	19 Yellow highlighted portions	20 Granted, as yellow highlighted portions of Exhibit 2 on pages 85-92 reveals highly confidential technical information regarding design details and/or operation of accused features in Intel’s products. Selwyn Decl. ¶ 19a. Furthermore, yellow highlighted portions of Exhibit 2 on pages 282-83, 289, 293, 304, 314, 324, 333, 339, 374, 422, and 447 reveal highly confidential information regarding Intel’s licenses, including payment terms from Intel’s license agreements, the scope of Intel’s license agreements, and other confidential licensing information. Selwyn Decl. ¶ 19b. Intel also seeks to seal the names of the counterparties to these agreements in Exhibit 2 because the names of counterparties to Intel’s agreements are maintained in confidence by Intel, and Intel is under confidentiality obligations to the counterparties not to reveal that information.

United States District Court
Northern District of California

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United States District Court
Northern District of California

1	2	3	4	5	6	7	agreements with an unfair insight into Intel's business strategies. Id. Likewise, public disclosure of the patents covered by a license agreement could reveal confidential information about the scope of the patent license and provide insight into the structure of Intel's licenses and licensing strategy. Id. Moreover, public disclosure of the patents covered by a license agreement in conjunction with the expert's analysis of those patents could provide competitors with insight into the technical functionality of Intel's products. Id.
8	9	10	11	12	13	14	Ex. 6 Excerpt from June 1, 2023 Rebuttal Expert Report of M. Ray Perryman Granted, as yellow highlighted portions of Exhibit 6 on page 65 (paragraph 136, fn. 243, fn. 244) reveal highly confidential technical information regarding design details and/or operation of accused features in Intel's products. Selwyn Decl. ¶ 21a. Furthermore, yellow highlighted portions of Exhibit 6 on pages 58, 59, 64, and 65 (paragraph 134) reveal highly confidential information regarding Intel's financial decisions including Intel's strategy for pricing and the criteria Intel uses for pricing, and Intel's revenue, profits, and costs. Selwyn Decl. ¶ 21b. Furthermore, yellow highlighted portions of Exhibit 6 on page 29 reveal highly confidential information regarding Intel's licensing negotiation strategy. Selwyn Decl. ¶ 21c.
15	16	17	18	19	20	21	Ex. 8 Excerpt from June 22, 2023 Reply Report of Ryan Sullivan Granted, as yellow highlighted portions of Exhibit 8 on pages 48 (paragraph 95), 49, 50, 74, and 81-84 reveal, or could be used to derive, highly confidential information regarding Intel's financial decisions, including Intel's strategy for pricing and the criteria Intel uses for pricing, and Intel's revenue, profits, and costs and sales volume. Selwyn Decl. ¶ 22a. Furthermore, yellow highlighted portions of Exhibit 8 on page 48 (paragraph 94) reveal highly confidential information regarding Intel's licensing negotiation strategy. Selwyn Decl. ¶ 22b.

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1 **ii. NXP**

2 NXP seeks to seal selected portions of VLSI's Damages Motion and its exhibits. NXP
 3 writes that the information should be sealed because "the exhibits that NXP seeks to seal all relate
 4 to highly-confidential information regarding its past and current intellectual property licensing and
 5 monetization practices, activities, capabilities, and efforts. Public disclosure of this information
 6 would provide NXP's competitors with sensitive information regarding NXP's internal business
 7 practices, as well as its relationships with other companies in the semiconductor industry and the
 8 patent licensing industry, thus disadvantaging NXP in future business and contract negotiations. It
 9 would also adversely affect NXP's efforts to enter into intellectual property arrangements with
 10 other companies." ECF No. 621 ¶¶ 7-11. NXP contends that it "narrowly tailored its proposed
 11 redactions only to information that maintains in confidence in the regular course of its business."
 12 *Id.* ¶ 6.

13 The Court finds that compelling reasons exist to seal the highlighted portions of the
 14 document. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2016 WL 7911651, at *1
 15 (N.D. Cal. Apr. 6, 2016) (finding "technical operation of [defendant's] products" sealable under
 16 "compelling reasons" standard); *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG,
 17 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020) (noting that courts have found "confidential
 18 business information" in the form of "business strategies" sealable under the compelling reasons
 19 standard.). The Court also finds that the request is narrowly tailored. The Court's ruling is
 20 summarized below:

ECF or Exhibit No.	Document	Portion(s) to Seal	Ruling
ECF 542-5 Ex. 4 to VLSI's Motion to Exclude Damages Opinions	Excerpts from the June 1, 2023 Rebuttal Expert Report of Lauren Kindler	Blue-boxed portions in ¶¶ 91- 92, 143, 154-155, 157.	Granted, as the document identifies and describes (1) confidential patent agreements entered into between NXP/Freescale and other parties, (2) confidential intellectual property licensing and monetization practices, activities, capabilities, and efforts by NXP and Freescale, and (3) confidential testimony from current and former employees of NXP and Freescale regarding its intellectual property practices. <i>See infra</i> ¶¶ 6-11.

1	ECF 542-7	Excerpts from the June 1, 2023 Rebuttal Expert Report of Dr. M. Ray Perryman	Blue-boxed portions in ¶¶ 68-69.	Granted, as the document identifies and describes confidential intellectual property licensing and monetization practices, activities, capabilities, and efforts by NXP and Freescale. <i>See infra</i> ¶¶ 6, 8.
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5 B. ECF No. 546 (Technical Motion)

6 Intel seeks to seal selected portions of VLSI's Technical Motion and its exhibits. Intel
 7 writes that licensing information should be sealed because “[m]aintaining the confidentiality of
 8 technical information about Intel's product design and operation, including for proposed designs,
 9 and manufacturing processes is critical to Intel's business. Knowledge of this information by third
 10 parties would put Intel at a competitive disadvantage in future product development and in its
 11 business dealings as its competitors could incorporate that information into their own development
 12 strategies and products to gain an unfair advantage over Intel in the market.” ECF No. 620 ¶ 11.
 13 Intel contends that it “narrowly tailored to the design details, operation and manufacturing
 14 processes of accused product features and certain Intel product prior art.” *Id.* ¶ 15.

15 The Court finds that compelling reasons exist to seal the highlighted portions of the
 16 document. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2016 WL 7911651, at *1
 17 (N.D. Cal. Apr. 6, 2016) (finding “technical operation of [defendant's] products” sealable under
 18 “compelling reasons” standard); *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG,
 19 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020) (noting that courts have found “confidential
 20 business information” in the form of “business strategies” sealable under the compelling reasons
 21 standard.). The Court also finds that the request is narrowly tailored. The Court's ruling is
 22 summarized below:

23 ECF or 24 Exhibit No.	25 Document	26 Portion(s) to 27 Seal	28 Ruling
	VLSI's Motion to Strike Certain Portions of Intel's Technical Expert Reports	Yellow highlighted portions	Granted, as yellow highlighted portions contain highly confidential technical information regarding design details, operation and manufacturing processes of accused product features. Selwyn Decl. ¶¶ 13, 15.

Ex. 6	Excerpt of Rebuttal Expert Report of Patrick Fay, Ph.D.	Yellow highlighted portions	Granted, as yellow highlighted portions contain highly confidential technical information regarding design details, operation and manufacturing processes of accused product features. Selwyn Decl. ¶¶ 13, 15.
Ex. 8	Excerpt of Expert Report of Patrick Fay, Ph.D.	Yellow highlighted portions	Granted, as yellow highlighted portions contain highly confidential technical information regarding design details, operation and manufacturing processes of certain Intel product prior art. Selwyn Decl. ¶¶ 14-15.

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. VLSI's Administrative Motion (ECF No. 542) is GRANTED.
2. VLSI's Administrative Motion (ECF No. 546, as corrected by ECF No. 550) is GRANTED.

Dated: October 16, 2023


BETH LABSON FREEMAN
United States District Judge